

No. 14636

**United States
Court of Appeals**
for the Ninth Circuit

MITCHELL PAUL DOBRENEN,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

**Appeal from the United States District Court for the
Southern District of California,
Central Division.**

FILED

MAR 10 1955

PAUL P. O'BRIEN,

CLERK

No. 14636

United States
Court of Appeals
for the Ninth Circuit

MITCHELL PAUL DOBRENEN,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Certificate of Clerk	52
Indictment	3
Judgment and Commitment	13
Minute Entries:	
November 29, 1954	4
December 14, 1954	10
December 20, 1954	12
January 3, 1955—Order Submitting and Granting Motion for Bail	54
Motion for Judgment of Acquittal	7
Names and Addresses of Attorneys	1
Notice of Appeal	15
Renewal of Motion for Judgment of Acquittal and in the Alternative Motion for New Trial	11
Statement of Points on Which Appellant In- tends to Rely on Appeal	55
Stipulation and Order, Filed December 14, 1954	5
Transcript of Proceedings	16
Witnesses:	
Dobrenen, Mitchell Paul	
—direct	34, 35
Green, Rev. Jack	
—direct	44
Keeley, Elias M.	
—direct	27
—cross	32
—redirect	34

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

J. B. TIETZ,
257 S. Spring St.,
Los Angeles 12, Calif.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney;

MANUEL REAL,
Assistant U. S. Attorney,
600 Federal Bldg.,
Los Angeles 12, Calif.

In the United States District Court in and for the
Southern District of California, Central Division

No. 23921 CD

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MITCHELL PAUL DOBRENEN,

Defendant.

INDICTMENT

[U. S. C., Title 50, App., Sec. 462 Universal Military Training and Service Act.]

The grand jury charges:

Defendant Mitchell Paul Dobrenen, a male person within the class made subject to selective service under the Universal Military Training and Service Act, registered as required by said act and the regulations promulgated thereunder and thereafter became a registrant of Local Board No. 107, said board being then and there duly created and acting, under the Selective Service System established by said act, in Los Angeles County, California, in the Central Division of the Southern District of California; pursuant to said act and the regulations promulgated thereunder, the defendant was classified in Class I-A and was notified of said classification and a notice and order by said board was duly given to him to report for induction into the armed

forces of the United States of America on August 25, 1954, in Los Angeles County, California, in the division and district aforesaid; and at said time and place the defendant did knowingly fail and neglect to perform a duty required of him under said act and the regulations promulgated thereunder [2*] in that he then and there knowingly failed and refused to be inducted into the armed forces of the United States as so notified and ordered to do.

A True Bill,

/s/ W. H. REPLOGLE,
Foreman.

/s/ LAUGHLIN E. WATERS,
United States Attorney.

Bond fixed in the amount of \$.

HWK:AH

[Endorsed]: Filed November 10, 1954. [3]

[Title of District Court and Cause.]

MINUTES OF THE COURT—NOV. 29, 1954

Present: Hon. James M. Carter,
District Judge.

U. S. Att'y., by Ass't. U. S. Att'y., Bruce
A. Beven.

Counsel for Defendant J. B. Tietz.

Defendant present (on bond).

*Page numbering appearing at foot of page of original Certified Transcript of Record.

Proceedings:

For arraignment and plea.

Defendant is arraigned true name and pleads Not Guilty.

It is Ordered that this cause is set for jury trial at 10:00 a.m., December 14, 1954.

EDMUND L. SMITH,

Clerk.

By L. B. FIGG,

Deputy Clerk. [4]

[Title of District Court and Cause.]

STIPULATION AND ORDER

It is Hereby Stipulated and Agreed by and between the United States of America, Plaintiff, and Mitchell Paul Dobrenen, Defendant, in the above-entitled matter, through their respective counsel, as follows:

That it be deemed that the Clerk of Local Board No. 107 was called, sworn and testified that:

1. She is a clerk employed by the Selective Service System of the United States Government.

2. The defendant, Mitchell Paul Dobrenen, is a registrant of Local Board No. 107.

3. As Clerk of Local Board No. 107, is legal custodian of the original Selective Service file of Mitchell Paul Dobrenen.

4. The Selective Service file of Mitchell Paul Dobrenen is a record kept in the normal course of business by Local Board No. 107, and it is the normal course of Local Board No. 107's business to keep such records. [5]

It is Further Stipulated that a photostatic copy of the original Selective Service file of Mitchell Paul Dobrenen, marked "Government's Exhibit 1" for identification, is a true and accurate copy of the contents of the original Selective Service file on Mitchell Paul Dobrenen.

It is Further Stipulated that a photostatic copy of the Selective Service file of Mitchell Paul Dobrenen, marked "Government's Exhibit 1" for identification, may be introduced in evidence in lieu of the original Selective Service file of Mitchell Paul Dobrenen.

Dated this 14th day of December, 1954.

LAUGHLIN E. WATERS,
United States Attorney;

LOUIS LEE ABBOTT,
Assistant United States Attorney,
Chief of Criminal Div.

/s/ CECIL HICKS, JR.,
Assistant United States Attorney,
Attorneys for Plaintiff.

/s/ J. B. TIETZ,
Attorney for Defendant.

/s/ MITCHELL PAUL DOBRENEN,
Defendant.

It is So Ordered this 14th day of Dec., 1954.

/s/ JAMES M. CARTER,
United States District Judge.

[Endorsed]: Filed December 14, 1954. [6]

[Title of District Court and Cause.]

MOTION FOR JUDGMENT
OF ACQUITTAL

May It Please the Court:

Now comes the defendant and moves the Court for a judgment of acquittal for each and every one of the following reasons:

1. In view of the draft board's failure to prepare findings of fact to controvert or impeach the defendant's conscientious objector claim, the defendant should be acquitted and the Court should hold that the final I-A classification was contrary to law arbitrary, capricious and without basis in fact.

2. The reclassification from Class I-O to Class I-A was made without basis in fact and solely because of invalid and artificial reasons.

3. The adverse recommendation of the Attorney General to the Appeal Board, used and relied on by said Appeal Board was unsupported by any factual basis therein, or in the file.

4. The local board deprived the defendant of procedural due process of law by failing to have posted conspicuously at the [7] office of the local board the names and addresses of the advisors to registrants, as required by Section 1604.41 of the regulations, to his prejudice.

5. The undisputed evidence is that the defendant gave the Hearing Officer of the Department of Justice material information, not contained in the filed and that neither it, nor a summary thereof, appears in the only document transmitted by the De-

partment of Justice to the Appeal Board, to wit, the letter of adverse recommendation by the Attorney General, now designated pages 50-51 of the selective service file.

6. The failure of the Court to compel the production of the FBI secret investigative report, so as to ascertain whether the defendant was given by the hearing officer a full and fair resume of the adverse evidence which tended to defeat the conscientious objector claim, and the Court's order sustaining the Government's motion to quash the subpoena duces tecum constituted a deprivation of the defendant's procedural rights.

7. The final adverse recommendation of the Department of Justice to the appeal board was not given to the defendant and he was not given a copy of it before he was placed in the final I-A classification; thereby he was deprived of his rights to answer and defend himself before the appeal board, contrary to the act and the Fifth Amendment to the United States Constitution.

8. The Department of Justice deprived defendant of his rights to procedural due process of law when it failed and refused to include in the file the report of the Hearing Officer, and the regulation prohibiting the placing of the report in the file is invalid because it conflicts with the act and the due-process clause of the Fifth Amendment to the United States Constitution.

9. It was the duty of the Department of Justice, regardless of its recommendation, to provide the appeal board with a complete summary of the

favorable evidence appearing in the FBI report that was also developed at the hearing before the hearing officer and reported by him. The Department's failure to provide the appeal [8] board with a complete summary of such evidence deprived the defendant of a full and fair hearing before the appeal board.

10. The failure of the Court to compel the production of the FBI investigative report and the order of the court sustaining the motion to quash the subpoena duces tecum made by the Government constitute a deprivation of the defendant's rights to due process of law upon criminal trials, contrary to the Fifth Amendment to the United States Constitution and the right to confrontation guaranteed by the Sixth Amendment, and also violate the statutes and rules of court providing for the issuance of subpoenas in behalf of defendants in criminal cases.

/s/ J. B. TIETZ,
Attorney for Defendant.

Clerk:

File nunc pro tunc as of date of trial.

/s/ JAMES M. CARTER,
Dist. Judge.

12/21/54.

Nunc pro tunc filed December 14, 1954.

[Endorsed]: Filed December 21, 1954. [9]

[Title of District Court and Cause.]

MINUTES OF THE COURT—DEC. 14, 1954

Present: Hon. James M. Carter,
District Judge.

U. S. Att'y, by Ass't U. S. Att'y: Cecil
Hicks, Jr.

Counsel for Defendant: J. B. Tietz.

Defendant present (on bond).

Proceedings:

For jury trial. Counsel answer ready.

Defendant waives a jury and signs written waiver,
which is approved by the Court and filed.

Attorney Tietz makes opening statement for de-
fendant.

Gov't moves orally to quash a subpoena duces
tecum, dated Dec. 6, 1954, served on the F.B.I., the
U. S. Att'y, and Lt. Col. Keeley to produce certain
records and documents. It Is Ordered that said
motion stand submitted.

A stipulation of facts is presented in writing,
approved by the Court and filed.

Gov't Ex. 1 is admitted in evidence.

Gov't rests.

It Is Ordered that motion to quash the aforesaid
subpoena duces tecum is granted.

Elias M. Keeley, witness for defendant, is called,
sworn, and testifies.

Mitchell Paul Dobrenen, defendant herein, is
called, sworn, and testifies in his own behalf.

Deft's Ex. A and B are marked for ident.

Jack Green, witness for defendant, is called, sworn, and testifies.

Defendant rests. There is no rebuttal.

Attorney Tietz argues for defendant.

Court recesses to 2 p.m. At 2 p.m. court reconvenes herein, and all being present as before, including defendant and counsel for both sides.

Attorney Tietz argues further for defendant.

Attorney Hicks argues for Gov't.

Defendant moves for judgment of acquittal, and It Is Ordered that said motion is denied.

Court Finds defendant guilty as charged, waives report of Probation Officer, and Orders cause continued to 2 p.m., Dec. 20, 1954, for sentence, and that defendant may remain on bond pending sentence.

EDMUND L. SMITH,
Clerk.

By L. B. FIGG,
Deputy Clerk. [10]

[Title of District Court and Cause.]

RENEWAL OF MOTION FOR JUDGMENT OF
ACQUITTAL AND, IN THE ALTERNA-
TIVE, MOTION FOR NEW TRIAL

The defendant moves the Court for a judgment of acquittal upon the same grounds heretofore urged and, in the alternative, to grant him a new trial for the following reasons:

1. The Court erred in denying defendant's mo-

tion for acquittal made at the conclusion of all the evidence.

2. The verdict is contrary to the weight of the evidence.

3. The verdict is not supported by substantial evidence.

Dated at Los Angeles: December 15, 1954.

/s/ J. B. TIETZ,

Attorney for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 16, 1954. [11]

[Title of District Court and Cause.]

MINUTES OF THE COURT—DEC. 20, 1954

Present: Hon. James M. Carter,

District Judge.

U. S. Atty., by Asst. U. S. Atty.: Cecil
Hicks, Jr.

Counsel for Defendant: J. B. Tietz.

Defendant present (on bond).

Proceedings:

For (1) hearing on renewed motion of defendant, filed Dec. 16, 1954, for judgment of acquittal or for new trial; (2) sentencing (upon a finding of guilty).

Attorney Tietz argues motions.

It Is Ordered that motions for judgment of acquittal and new trial are denied.

Court Sentences defendant to four years' imprisonment for offense charged in Indictment.

Defendant files notice of appeal and application for admission to bail pending determination of appeal. It Is Ordered that motion for bail is denied.

Defendant moves for stay of execution.

It Is Ordered that stay of execution is granted until 12 o'clock noon Dec. 27, 1954, and that upon defendant's surrender his bond will be exonerated.

EDMUND L. SMITH,
Clerk.

By L. B. FIGG,
Deputy Clerk. [13]

United States District Court for the Southern
District of California, Central Division

No. 23,921—Criminal

UNITED STATES OF AMERICA

vs.

MITCHELL PAUL DOBRENEN

JUDGMENT AND COMMITMENT

On this 20th day of December, 1954, came the attorney for the Government, and the defendant appeared in person and by counsel, J. B. Tietz.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of

guilty of the offense of failing and neglecting to perform a duty required of him under the Universal Military Training and Service Act and the regulations thereunder, in that he failed and refused to be inducted into the armed forces of the United States as so notified and ordered to do, in violation of 50 U.S. Code, App., Sec. 462, as charged in the Indictment; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four years.

It Is Adjudged that defendant is granted a stay of execution until twelve o'clock noon, December 27, 1954, and that upon his surrender to custody his bond will be exonerated.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ JAMES M. CARTER,

United States District Judge.

[Endorsed]: Filed December 20, 1954. [14]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Appellant, Mitchell Paul Dobrenen, resides at 156½ So. Pecan Street, Los Angeles 33, California.

Appellant's attorney, J. B. Tietz, maintains his office at 534 Douglas Building, 257 South Spring Street, Los Angeles 12, California.

The offense was failing to submit to induction, U.S.C., Title 50 App., Sec. 462—Selective Service Act, 1948, as amended.

On December 20, 1954, after a verdict of Guilty, the Court sentenced the appellant to confinement in an institution to be selected by the Attorney General for

I, J. B. Tietz, appellant's attorney, being authorized by him to perfect an appeal, do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

/s/ J. B. TIETZ,
Attorney for Appellant.

[Endorsed]: Filed December 20, 1954. [15]

In the United States District Court, Southern
District of California, Central Division

No. 23,021—Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MITCHELL PAUL DOBRENEN,

Defendant.

Honorable James M. Carter, Judge Presiding.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Appearances:

For the Plaintiff:

LAUGHLIN E. WATERS,
United States Attorney, by

CECIL HICKS, JR.,
Assistant United States Attorney.

For the Defendant:

J. B. TIETZ, ESQ.

December 14, 1954—10 A.M.

(Other court matters.)

The Court: All right, call the other case.

The Clerk: No. 23921 Criminal, United States v.
Mitchell Paul Dobrenen, for jury trial.

Mr. Tietz: We will waive the jury. The Govern-

ment understood that.

The Court: You will waive what?

Mr. Tietz: The jury.

The Court: Has that waiver been signed yet?

The Clerk: No, your Honor.

The Court: Mr. Dobrenen, the Constitution of the United States provides that you are entitled to a trial by jury, and you can only lose that right by a waiver in writing signed in open court; have you talked to your attorney, Mr. Tietz, about waiving trial by jury?

The Defendant: Yes.

The Court: And after talking with him it is your decision to waive your jury trial?

The Defendant: Yes.

The Court: All right.

The document has been signed by the defendant and counsel. I will approve it.

The Government has filed a trial brief in the matter [2*] which I have looked over, and the defendant has filed a trial memo, merely listing the cases on which he will rely. Mr. Tietz, do you want to give me an outline form of the points that you want to make, the subject-matter of them, so I can follow along?

Mr. Tietz: Yes, your Honor. You will have a total of nine points. The first one will be that there is no basis in fact for denying one of the conscientious objector classifications.

This defendant received eventually a I-A.

The second point is that he was illegally—that is,

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

the Draft Board exceeded its jurisdiction when it reclassified him from I-O to I-A on November 14, 1952.

The third point will be that the recommendation of the Attorney General to the Appeal Board gave either no or insufficient facts to support their opinions, and therefore the conclusion they reached would fall.

The fourth point is that the Local Board had no advisor and didn't post the name of any advisor, and he was prejudiced thereby.

The fifth point is that the Hearing Officer did not give him a fair hearing in that he didn't send on to the Attorney General material, pertinent information that the registrant gave him.

The sixth point is based on the supposition that the [3] court may do as it has done in the past, quash the subpoena for the FBI reports, refuse to admit them. We believe that—and we will argue it later—would be erroneous, for we have several attacks to make on the bona fides and fairness of the Hearing Officers' report to the Attorney General and the Attorneys General's recommendation to the Appeal Board.

The next point is that neither the Hearing Officer, nor the Attorney General sent the defendant any copies of the reports they made, that is, the Hearing Officer to the Attorney General, and the Attorney General to the Appeal Board, so that he had the opportunity to set the record straight on misconceptions of fact, and that was to his prejudice.

The next point—

The Court: Let me inquire. It has never been the practice in any case to do that, has it?

Mr. Tietz: No.

The Court: This is a new point you are making?

Mr. Tietz: It is not a new point; it is a point that has not been decided yet by any court. It has been——

The Court: Have you raised it before?

Mr. Tietz: Yes. I will point out—as a matter of fact, it is before the Supreme Court now.

The Court: You have raised it before trial judges in [4] this district?

Mr. Tietz: Yes, sir.

The Court: And they turned you down on it?

Mr. Tietz: Yes, sir.

The Court: Do you have it on appeal to the Circuit?

Mr. Tietz: It is farther than that. The general counsel for Jehovah's Witnesses has it on appeal in the Supreme Court. Certiorari has been granted in the Gonzales case.

The Court: Well, certiorari may have been granted in that case, but was that one of the grounds on which certiorari was granted? There is a big difference. The Supreme Court will grant certiorari in a case and will also specify the particular points that they are going to consider. Now, do you know whether or not——

Mr. Tietz: I haven't that information. I do have the information before me that there were only three points in that case, and I can give the court

those points and the court could then judge whether or not it was considered by the Supreme Court.

The Court: What were the three points?

Mr. Tietz: The first point was one shared by all six of the cases that are either in there or certiorari had been applied for. Four are in and two certiorari has been applied for and I do not know, I don't think there has been any decision [5] yet——

The Court: What is that point?

Mr. Tietz: The no basis in fact on the conscientious objector classification as distinguished from the Dickinson IV-D classification.

The Court: The White situation?

Mr. Tietz: White, Tomlinson, Gonzales, all have that one point in common.

The Court: What is the second point?

Mr. Tietz: The second point in the Gonzales case is the fact that his recent conversion to the belief of Jehovah's Witnesses was used by the Selective Service system and by the Department of Justice as one of the bases for denying him the conscientious objector classification.

So that those two, with the point that the Attorney General didn't mail him copies of the recommendation, are the three that are briefed.

I have taken these points from the briefs of the petitioner, which I had.

The Court: Do you know what the number of the Gonzales case is on the Supreme Court docket?

Mr. Tietz: Yes. No. 69 on the October term.

The Court: This term?

Mr. Tietz: Yes.

The Court: All right. [6]

Mr. Tietz: They were admitted October 14th, I believe.

The Court: I would guess that certiorari was granted on the first ground.

Mr. Tietz: It may be, but that ground is present in every one of the six.

The Court: That is probably why certiorari was granted in those cases.

That is No. 7. Now, what is your eighth point and ninth point?

Mr. Tietz: No. 8 is another one that no court has directly passed on, although I do have one Circuit decision that I think helps my argument, and that is that there is no Hearing Officer report in the file.

The court may recall that years ago when the court had a criminal calendar last, they appeared, and the regulations were changed, and my argument is going to be that the regulation is contrary to the Act and therefore void.

Now, my ninth point——

The Court: You say no court has passed on this. Do you mean in a written decision? You have urged this——

Mr. Tietz: No, no.

The Court: You haven't even urged this one?

Mr. Tietz: No, I haven't urged it. The reason why is this: Yesterday I received one of the many helps that the general counsel for Jehovah's Witnesses sends out to [7] attorneys that are associated with him in cases, and among the 47 points that he

has briefed for the help of local counsel were two that I have never presented. And the next one——

The Court: I wonder how you missed those.

Mr. Tietz: Lawyers differ, any many a time——

The Court: That is a facetious remark. There is no ill feeling in connection with it, Mr. Tietz.

Mr. Tietz: On the contrary, I always have my ears open, although sometimes I don't hear quick enough.

Yesterday when my client Clark presented a matter, I am going to make that the basis for a motion for a new trial. He had something there. Clients often have things that lawyers don't see.

The Court: Young Clark should be an expert on this matter now. How many years has he been working on this file?

Mr. Tietz: Like many a young man, he has been processed and reprocessed.

The Court: He is making it a career.

Mr. Tietz: I think the Selective Service is making it a career for him.

My last point to be stated is as follows: It was the duty of the Department of Justice, regardless of its recommendation, to provide the Appeal Board with a complete summary of the favorable evidence appearing in the FBI report that [8] was also developed at the hearing before the Hearing Officer and reported by him. The Department's failure to provide the Appeal Board with a complete summary of such evidence deprived the defendant of a full and fair hearing before the Appeal Board.

Now, might what I have said be considered as a

motion made at the end of all the evidence so I won't have to take the time of the court to repeat this?

These are my points that I am certain will arise in the case based on the evidence.

The Court: You have listed them, so if you want to incorporate them by reference you may refer back to what we will refer to as your list of points. Is that satisfactory?

Mr. Tietz: Thank you.

Mr. Kwan: Your Honor, may I have permission to bring up the matter of Joy Stevens-California and Ben Stevens, case No. 23871? The defendant is in court now.

The Court: Yes.

(Interruption for other court matters.)

The Court: All right, Mr. Hicks, proceed.

Mr. Hicks: Your Honor, may I at this time make a motion to quash the subpoenas? Yesterday afternoon I was advised that subpoenas had been served upon the special agent in charge, or his deputy, of the Federal Bureau of Investigation, the United States Attorney or his assistant, and Lt. Col. [9] Elias M. Keeley. It is a subpoena duces tecum directed to those three persons directing them to bring to this court room this morning in this case the secret recommendation of the Hearing Officer to the Department of Justice and the complete secret investigative report made by the FBI agents and/or others in the investigation of the conscientious objector claim made by the defendant and submitted

to the Hearing Officer of the Department of Justice, considered by him and relied upon by him in making his report to the Department, and relied upon by the Attorney General in his recommendation to the Appeal Board of the Selective Service System.

The Court: Let me see the subpoena.

(Handing document to the court.)

The Court: All right. Now, you want to make a motion. State your motion. May it be done orally, Mr. Tietz?

Mr. Tietz: I beg your pardon?

The Court: May the motion be made orally?

Mr. Tietz: Yes.

Mr. Hicks: It is a motion to quash the subpoena, your Honor, and the motion is based upon the decision in the White case, which passed upon the question of subpoenaing the FBI reports.

It is made on the further ground, on behalf of Lt. Col. Keeley, that none of the items mentioned therein are in his possession. [10]

Mr. Tietz: I didn't hear the last part.

(Record read by the reporter.)

The Court: What is the present status? This FBI problem went to the Supreme Court in the Nugent case.

Mr. Hicks: That is correct, your Honor. And the Nugent case said that the registrant was entitled to a fair resume of adverse evidence.

The Court: And it is your contention that the Selective Service file contains such a fair summary?

Mr. Hicks: Yes, your Honor, it does.

The Court: Then you say the matter was considered in the White case?

Mr. Hicks: Yes, it was, your Honor. And the court in the White case held that the subpoenas were properly quashed.

Mr. Tietz: To save a little time, your Honor, I agree with the United States Attorney on that. I am raising the point merely to protect the record in the event the Supreme Court reverses the Ninth Circuit.

It is in the Tomlinson and the White cases, as well as in the Simmons case, so it is definitely before the Supreme Court in the Simmons case and may be in the Tomlinson and White cases.

The Court: For the purpose of the record I probably should have the Selective Service file in evidence before [11] the motion is ruled on. So I will take the motion under submission at this time and subsequently rule on it.

Mr. Hicks: Your Honor, I have here a photostatic copy of the Selective Service file of Mitchell Paul Dobrenen and I ask that it be marked Plaintiff's Exhibit 1 for identification.

The Clerk: Government's 1 for identification.

(The document referred to was marked Plaintiff's Exhibit 1, for identification.)

Mr. Hicks: I have, also, your Honor, a stipulation entered into by myself representing the Government, by Mr. Tietz representing the defendant, and signed also by the defendant himself, concern-

ing the testimony of the clerk of Local Board 107. It is the customary stipulation.

The Court: All right. Hand it to the clerk. It may be filed.

On the basis of the stipulation Exhibit 1, for identification, will be received in evidence.

(The document referred to, marked Plaintiff's Exhibit 1, for identification, was received in evidence.)

Mr. Hicks: The Government rests, your Honor. Did your Honor wish to rule upon the motion? You haven't had an opportunity to examine the file. Excuse me.

The resume referred to, your Honor, is on page 52.

The Court: All right. The motion to quash is granted. [12]

Mr. Hicks: May Mr. Norton of the FBI, who is here in response to the subpoena, be excused, your Honor?

The Court: He may be excused.

All right, Mr. Tietz.

Mr. Hicks: The Government rests.

Mr. Tietz: The defendant will call Col. Keeley.

ELIAS M. KEELEY

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Elias M. Keeley.

Direct Examination

By Mr. Tietz:

Q. Colonel, what position do you hold with Selective Service?

A. I am a lieutenant colonel in the United States Army, assigned to Selective Service, and in the capacity of district co-ordinator for Selective Service.

Q. Local Board 107 is within your jurisdiction?

A. It is.

Q. You have a degree of familiarity with the office arrangement of that board?

A. I do. [13]

Q. That board has a bulletin board in its office, does it not, where the public can see things?

A. It does.

Q. Has that Board ever had posted on that bulletin board the names and addresses of the advisors to registrants as provided by Section 1604.41 of the regulations?

A. I don't know whether I can say that——

Q. I will withdraw that.

Instead of saying "ever" at any time during the processing of this registrant, which covers a period October, 1950, to the present.

A. It has had the names of our Government appeal agents, and the Local Board members, clerks, and registrars, which we deem advisors. All are advisors to registrants.

Mr. Tietz: I ask that the last be stricken as unresponsive.

(Testimony of Elias M. Keeley.)

The Court: Overruled. You asked him a question relating to the statute. Now, what is an advisor is a question of fact. He said these people are in his opinion advisors.

Overruled.

Q. (By Mr. Tietz): Has there ever been a functionary of that Local Board termed an advisor, as stated in Section 1604.41?

A. Not in the language of that particular section.

Q. Do you mean by your answer that all the various [14] officials you have named are willing to advise, if someone asks them for advice?

A. That is their purpose, yes.

Q. Has there ever been——

The Court: Have they been instructed to give advice to registrants if registrants come to them?

The Witness: Yes, your Honor.

The Government appeal agents are attorneys who are appointed for that specific purpose. There are about fifty Government appeal agents here in Southern California, in Los Angeles County.

Q. (By Mr. Tietz): That is one for each board?

A. That's right.

Q. There is a special section in the regulations that provides for the functionary known as Government appeal agent, isn't there?

A. That's right.

Q. And that is entirely separate and distinct from the functionary known as advisor to registrants?

A. That is correct.

(Testimony of Elias M. Keeley.)

Q. Has there ever been a posting on the bulletin board that the various people you named would give free advice to registrants upon request?

A. Yes, most bulletin boards carry information to the registrants for them to inquire at the desk, and the [15] information will be given them.

Q. Can you quote approximately the wording of that notice? You know, Colonel, this is the first time I have heard that, although I have asked in half a dozen local cases and many throughout the State, that there was such a notice. Will you tell us what that notice says?

A. Each Local Board puts their own notice on the board to that effect. The SSS form 110 Notice of Classification carried printed right on there that if the registrant wishes any advice he may request the same from the Government Appeal agent.

Q. Advice on appeal? A. On anything.

Q. Is it that broad?

A. Yes, the Government appeal agent is supposed to advise registrants on any and all questions.

Q. Have you ever seen the notice on the bulletin board of Local Board 107?

A. There is a notice there that I noticed the day before yesterday, I would say last week, which does give reference to some of the registrars, and what the wording is I cannot say.

Mr. Tietz: That is all.

The Court: What is this form number you have referred to? [16]

(Testimony of Elias M. Keeley.)

The Witness: SSS form 110. That is a Notice of Classification. That is the postcard that is mailed to the registrant following every classification.

Mr. Tietz: You won't find that in the file.

The Court: You don't have copies of it?

The Witness: No. Generally the United States Attorney sets it up in his brief.

The Court: Do you have one available, Mr. Tietz?

Mr. Tietz: I happen to have with me every version that has been used since 1942. Would the court like me to pass them up?

The Court: Well, I would just like the one that was sent to this registrant if you have it.

Do you have it, or some samples?

Mr. Tietz: I had better go over them with the Colonel. They aren't all dated. I want to make sure I don't hand you the wrong one.

The Court: Here is one that was dated April 13th, '53, not to this registrant; can I read this into the record?

Mr. Tietz: Yes. We can assume that that was the version used during the processing, the major portion, any way, of this registrant.

The Court: On the form SSS-110, which is on a postal card, one side of the postal card of course is reserved for the name and address of the registrant and the Government [17] mailing stamp. Up in the left-hand corner the address of the Local Board. Then on the other side of the postal card

(Testimony of Elias M. Keeley.)

there is a box about the size of a card that you put in a purse, reading on three sides, "Cut out this line to detach card." Inside of that card appears the name of the registrant, his number, his classification, the date, and the vote of the Board. It is signed by a member of the Local Board.

Then the following appears:

"The law requires you, subject to heavy penalty for violation, to carry this notice, in addition to your registration certificate, on your person at all times—to exhibit it upon request to authorized officials, to surrender it upon entering the Armed Forces to your commanding officer."

All that appears in italics.

"For advice see your Government Appeal Agent."

Then follows another paragraph about what the law requires of the registrant.

On the left-hand side of the card, to the left of this detachable cutout card, appears some small type with the heading, "Notice of Right to Appeal."

Do I need to read that in, I wonder? [18]

Mr. Tietz: That is what the appeal agent functions on.

The Court: That is your contention. If you want it read——

Mr. Tietz: Only that. According to the regulation, which I will ask the court to read or have me read it to the court, I have them here——

The Court: I will read the rest of this card, then.

"Notice of Right to Appeal. Appeal from classi-

(Testimony of Elias M. Keeley.)

fication by Local Board must be made within 10 days after the mailing of this written notice by filing a written notice of appeal with the Local Board. Within the same 10-day period you may file a written request for personal appearance before the Local Board. If this is done the time within which you may appeal is extended to 10 days from the date of mailing of a new notice of classification after such personal appearance. If an appeal has been taken and you are classified by the Appeal Board in either class I-A or class I-A-O, and one or more persons of the Appeal Board dissented from such a classification, you may file a written notice of appeal to the President with your Local Board within 10 days after the mailing of this notice." [19]

All right. I hand the card back to you, Mr. Tietz, and you may keep it.

Mr. Hicks: May I proceed, your Honor?

The Court: Yes. Were you through with Col. Keeley?

Mr. Tietz: Oh, yes. He was on cross-examination.

Cross-Examination

By Mr. Hicks:

Q. Col. Keeley, is there anyone provided by the Local Boards to advise and assist registrants in the preparation of questionnaires and other Selective Service forms?

A. Yes, we have about three or four clerks in each board, and also the Government appeal agent and the registrar who registers, originally registers

(Testimony of Elias M. Keeley.)

the registrants; and, also, Local Board members, if the man requests that information.

Q. How many registrars are there in Los Angeles County?

A. As of today I think there is 144.

Q. How many Local Boards are there?

A. 47.

Q. You say there is a Government appeal agent, there is one Government appeal agent for each Local Board? A. Yes.

Q. And how many Local Board members are on each Local [20] Board?

A. Three or more, up to five. There are approximately 151 Board members in Los Angeles County.

Q. Is there anyone at the Local Board to advise registrants on other matters relating to their liabilities under the Selective Service law?

A. There is about 15 clerks in each location headed by a local group co-ordinator, and in the event the local group co-ordinator cannot answer the questions they are referred to my office or Capt. Miller's office, or Col. Hartwell's office.

Q. Would Government appeal agents also advise registrants concerning their liabilities under the law? A. Yes. They do it every day.

Mr. Hicks: That is all.

The Court: May the Colonel step down?

Mr. Tietz: Yes.

The Court: Thank you, Colonel. [21]

MITCHELL PAUL DOBRENEN

called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please?

The Witness: Mitchell Paul Dobrenen.

Mr. Tietz: Before asking this witness a question, may I recall Col. Keeley for a question or two and have this witness just step aside?

The Court: Yes, step down.

ELIAS M. KEELEY

called as a witness by the defendant, having been previously sworn, resumed the stand and testified further as follows:

Redirect Examination

By Mr. Tietz:

Q. Colonel, you testified a few minutes ago that there is a posting on the bulletin board of Local Board No. 107 of the fact that there are various functionaries, registrars, appeal agents, and others, who will give advice? A. That's right.

Q. Was there such a posting at any time from October 26, 1950, to approximately June, 1954?

A. I think you are taking in a little bit too much territory. There was no such a posting, maybe, prior to [22] January 1st, 1954, because at that time we did not have the particular type of advisor to registrants. Those are only appointed if the State Director deems it advisable.

Q. It is definite that at no time have you had

(Testimony of Elias M. Keeley.)

advisors as called for by 1604.41?

The Court: That calls for a conclusion of the witness.

What you mean is at no time have you had an employee or a functionary of the system to whom you gave the title of Advisor, is that right?

The Witness: Advisor to Registrants.

The Court: Advisor to Registrants.

The Witness: That is correct.

Q. (By Mr. Tietz): You believe we are safe in understanding that at no time prior to January, 1954, was there any posting on the bulletin board that advice, free advice, could be obtained by registrants?

A. No. There has always been some information on the bulletin board about advice. But there has not been the names of the registrars and other particular names on the bulletin board only since about January 1st, 1954, when you first raised that point.

Mr. Tietz: That is all.

Mr. Hicks: No questions.

The Court: All right. Step down, Colonel. [23]

MITCHELL PAUL DOBRENEN

called as a witness in his own behalf, having been previously sworn, resumed the stand and testified as follows:

Direct Examination

By Mr. Tietz:

Q. You are the defendant in this case, are you not?
A. Yes.

(Testimony of Mitchell Paul Dobrenen.)

Q. You had a hearing before a Hearing Officer of the Department of Justice, did you not?

A. Yes.

Q. Do you have a recollection of what took place during that hearing? A. Yes.

Q. Can you tell us whether or not after that hearing at any time you were ever sent a copy of the Hearing Officer's report to the Attorney General? A. No.

Q. Can you tell us whether at any time you were ever sent a copy of the Attorney General's recommendation to the Appeal Board? A. No.

Q. When did you first see the Attorney General's recommendation to the Appeal Board?

A. I went to the Local Board and looked at my file. [24]

Q. About when was that?

A. About the second week of August.

Q. Why did you go then?

A. I got my induction papers and I went down to look at the file.

Q. And then you saw the letter that the Attorney General wrote to the Appeal Board, which is pages 50 and 51 of the exhibit here today?

A. Yes.

Q. What did you do?

A. I went to one of the advisors from the church, Mr. Pete Wren.

Q. W-r-e-n, is it not?

(Testimony of Mitchell Paul Dobrenen.)

A. Yes. And I copied the file, and he looked at it and asked me if the things were true in there. And there were some points that were not true, so we wrote a rebuttal statement on it.

Q. Did that rebuttal statement include things you had told the Hearing Officer that he did not send on to the Attorney General? A. Yes.

Q. Name some of them.

A. Well, he states in his report that my limitations to the Molokan Church attending is due—I told him is due to the fact that I don't understand Russian. And that is [25] true. But also I stated that I belong to the Young Russian Christian Association and attend Bible class on Wednesday and Sunday evenings, and service on Sunday and, help—

Q. How often do you attend them?

A. Regularly.

Q. You mean every week?

A. I miss a few times, yes.

Q. You told that to the Hearing Officer?

A. Yes.

Q. And you found nothing of that in his report? A. Nothing.

Q. But you did find something about not attending the Molokan Church regularly?

A. Yes.

Q. What else did you find in the—

The Court: I don't know how we can have a witness that says he can't find things in a file. The file speaks for itself. And as a matter of fact, this

(Testimony of Mitchell Paul Dobrenen.)

file shows just the contrary to what the witness has testified. If you look at page 52. "A leader of the Young Russian Christian Association"—

Mr. Tietz: Your Honor is reading from the resume of the FBI; not what the Hearing Officer said or what this defendant said.

The Court: Let me finish what I am reading then. [26]

"A leader of the Young Russian Christian Association advised that the registrant regularly attends meetings of that association as well as the Molokan Church."

Did you tell the Hearing Officer you were a member of the Russian Christian Molokan Church?

The Witness: Russian Christian Molokan Church?

The Court: Yes. Did you tell him you were a member?

The Witness: Yes.

The Court: Is the Young Russian Christian Association a part of the Russian Christian Molokan Church?

The Witness: A part of it? No, I wouldn't say it is part of.

The Court: It is under the same church?

The Witness: No, it isn't.

The Court: Under what church is it?

The Witness: Well——

The Court: Or does it come under the jurisdiction of the church?

(Testimony of Mitchell Paul Dobrenen.)

The Witness: Not under the Russian church, but a majority of the members, in fact, just about all the members belong to the Molokan Church.

The Court: Is this association connected with any other church?

The Witness: No, I don't think so. [27]

The Court: Then you only belong to one church?

The Witness: The Molokan Church.

The Court: That is what you told the Hearing Officer?

The Witness: Yes.

The Court: Go ahead, Mr. Tietz.

Q. (By Mr. Tietz): What are these Wednesday night meetings? Are they religious in character?

A. Yes, they are Bible classes.

Q. Is there anything else that you told the Hearing Officer that he did not transmit in his report to the Attorney General, and that you do not find in the Attorney General's letter to the Appeal Board?

A. Yes.

Q. What was that?

A. I mentioned to him the fact that on the investigative report there is one point that was not correct. It states that I left a job without notice. But I did talk it over with the superintendent before I left the job. And they said I never did—I didn't go back to work over there. But after the first of the following year I worked there for about a month at the same place that I left.

(Testimony of Mitchell Paul Dobrenen.)

Q. After you saw these things, and then you secured advice from an elder of the Molokan Church named Pete Wren—he is an elder, isn't he?

A. Yes. [28]

Q. (Continuing): You made up what you call a rebuttal statement. What did you do with that?

A. I mailed it out to I think seven or eight different people.

Q. Were any of them Selective Service people?

A. Yes.

Q. What ones were they, do you recall?

A. I am not sure, but Hartwell and Keeley, and I don't know who the others were.

Q. Did you mail any to the State Director? Did you mail any to Sacramento? A. Yes.

Q. Did you mail any to Washington?

A. Yes.

Q. Have you a copy of it with you?

A. Yes, I have.

The Court: Did you file one with your Local Board?

The Witness: I am pretty sure it was filed with the Local Board. It is not in the exhibit.

The Court: You say "pretty sure." Did you or did you not take one and deliver it to the Clerk of the Local Board?

The Witness: I did not deliver it personally, but I am pretty sure that one was mailed.

Mr. Tietz: I ask that this rebuttal document be

(Testimony of Mitchell Paul Dobrenen.)

marked for identification as Defendant's Exhibit A. [29]

The Court: Mark it A for identification.

(The document referred to was marked Defendant's Exhibit A, for identification.)

The Witness: One is a rebuttal and one is a letter.

The Clerk: There are two documents, your Honor.

The Court. A and B.

(The document referred to was marked Defendants' Exhibit B, for identification.)

Q. (By Mr. Tietz): Are these exact copies of those that you mailed out to these various Selective Service Officers? A. Yes.

Mr. Tietz: I ask that they be introduced, admitted in evidence as Defendant's Exhibits A and B.

Mr. Hicks: I haven't examined them, your Honor.

Mr. Tietz: I am sorry.

The Court: Well, you know that you mailed this to the National Service Board for Religious Objectors, is that right?

The Witness: Yes.

The Court: But you just think that you mailed a copy to the Local Board?

The Witness: Yes, I think—I am not too sure where they were written to, but Mr. Wren gave the names about who to send them to.

(Testimony of Mitchell Paul Dobrenen.)

The Court: Did Mr. Wren give you the name of your Local [30] Board as one of the places to send it?

The Witness: I think it was. It was on Santee Street.

The Court: But you are just pretty sure, you have no certainty that you mailed one to the Local Board?

The Witness: I can check up, but I am not real sure right now.

Q. (By Mr. Tietz): Was Rev. Jack Green with you at any time while this was being done?

A. Do you mean the rebuttal statement?

Q. Yes. A. No.

Q. He was with you at the hearing before the Hearing Officer, was he not? A. Yes.

The Court: What is your offer? Do you offer these in evidence now?

Mr. Tietz: Yes.

Mr. Hicks: Your Honor, I will object to their admission.

May I ask the witness a couple of questions regarding them?

The Court: Yes.

Mr. Hicks: Mr. Dobrenen, the documents that you have handed the clerk, the one containing your own statement—what is that marked, Mr. Clerk?

The Clerk: Defendant's A. I will give it to the witness. [31]

Mr. Hicks: Thank you.

(Testimony of Mitchell Paul Dobrenen.)

That bears the date September 15, 1954. Is that the approximate date on which you sent this material out?

The Witness: Yes.

Mr. Hicks: Your Honor, I will object to them as immaterial. The record reveals that he refused to be inducted on August 26, 1954, and any evidence that was submitted thereafter would have no materiality to the issues in this case.

Mr. Tietz: Your Honor, my thought is that it is corroborative of his testimony and what took place at the Hearing Officer's hearing.

The Court: As to Defendant's Exhibit B, which is the letter from Green, that was also mailed out about the same time as Exhibit A?

The Witness: It was mailed with these letters.

The Court: All right. Objection sustained.

Mr. Tietz: To both the documents?

The Court: Yes.

Mr. Tietz: You may cross-examine.

The Court: They are in the record marked for identification, so you have your record, Mr. Tietz.

Mr. Hicks: No questions, your Honor.

Mr. Tietz: Rev. Green, will you please take the stand. [32]

Rev. Jack Green: I affirm.

The Clerk: You affirm under the pains and penalties of perjury?

Rev. Jack Green: That's right.

REV. JACK GREEN

called as a witness by and on behalf of the defendant, having affirmed to tell the whole truth under the pains and penalties of perjury, testified as follows:

The Clerk: What is your name?

The Witness: Rev. Jack Green.

Direct Examination

By Mr. Tietz:

Q. Rev. Green, will you please tell us your position with the Young Russian Christian Association?

A. Yes. I am the pastor of the church and the director of the organization.

The Court: What church?

The Witness: It is an independent church.

The Court: What is the name of the church?

The Witness: We go by the name of Young Russian Christian Association, for the simple reason that the Molokans oppose their young people attending any other church. We started out around 15 years ago as just a Bible class, and it grew to [33] the place where we have approximately 300 members, and we don't use the name "church" because we try to work—not against the Molokan people, but with the Molokan people, and I am not of Russian descent, and they feel like I am an intruder. We are organized as a church and we are incorporated by the State of California.

Q. (By Mr. Tietz): How long have you known the defendant, approximately?

A. I would say around 12 years.

(Testimony of Rev. Jack Green.)

Q. Has he been a member of the Young Russian Christian Association since approximately that time?

The Court: Just a minute now.

There are certain things that you can do and there are other things that you can't. You can't offer evidence before me that was not offered before the Draft Board. If this evidence is before the Draft Board, this is merely a duplication; if it wasn't offered before the Draft Board, it is too late to offer it before me.

Mr. Tietz: With respect to that, I will have another point to offer in addition to the nine, but I will go on, on the ground that your Honor will not permit a de novo trial——

The Court: That's right.

Mr. Tietz: ——on the conscientious objections of this defendant.

Q. (By Mr. Tietz): Did you appear with this defendant [34] before the Hearing Officer of the Department of Justice? A. Yes, I did.

Q. You heard him testify concerning certain facts that he gave the Hearing Officer?

A. Yes.

Q. Did you hear him make those statements to the Hearing Officer? A. Yes, I did.

Mr. Tietz: That is all. You may cross-examine.

Mr. Hicks: No questions, your Honor.

The Court: You may step down.

Mr. Tietz: Now the defendant rests, your Honor. Has the Government any rebuttal?

Mr. Hicks: No rebuttal, your Honor.

The Court: Well, both sides rest.

You can't finish before noon, can you?

Mr. Tietz: Well, I could. It depends on how much time the Government may need. I could finish in about three-quarters of an hour.

The Court: Well, let's take our regular morning recess and then you can go on until noon, and if we have to come back this afternoon we will take a little time off.

(Recess taken.)

The Court: Let the record show the defendant present with his counsel. [35]

Mr. Tietz: If the court please, in making my argument I want to make certain that there is no possibility of any misunderstanding as to the precise position that this defendant has, as distinguished from others who have had their cases tried in the last day or two, the last few weeks.

(Whereupon there was argument by counsel and discussion between court and counsel, which argument and discussion was reported by the court reporter but not transcribed at the request of counsel.)

The Court: We want a little more time. We will have to take our noon recess. Adjourned to 2:00 o'clock.

(Whereupon at 12:10 o'clock p.m. a recess was taken until 2:00 o'clock p.m. of the same day.) [36]

Tuesday, December 14, 1954, 2:00 P.M.

The Court: All right. Call the case.

The Clerk: No. 23,921 Criminal, United States vs. Dobrenen, further trial.

(Further argument by counsel and discussion between court and counsel, which argument and discussion were reported by the court reporter but not transcribed at the request of counsel.)

The Court: Did you want to repeat a motion based on your points? Is that what you wanted to do?

Mr. Tietz: I thought I did. But to make sure the record is clear, the defendant repeats the nine separate points stated at the——

The Court: At the outset of the case, and characterized then as your list of points?

Mr. Tietz: Yes. And adds to it a tenth point. I can't recall that point. Might I have time to submit a written statement of the nine points and the tenth one? The court heard my statement during the middle of the case on that.

The Court: You can refer to it by reference as being the tenth point, whatever it is. And what is your motion based on those points?

Mr. Tietz: Motion for judgment of acquittal.

The Court: The motion is denied. [37]

The court finds the defendant guilty.

Is there any reason to have a probation report in this case?

Mr. Tietz: No. I would prefer to have the sen-

tence deferred until next Monday afternoon at 2:00 o'clock. The court has some others.

The Court: That is satisfactory. The matter of the probation report will be waived. The defendant will be back here on December 20th at 2:00 p.m. for sentence.

The Clerk: You mean by that he is to remain on bond, your Honor?

The Court: Yes, he may remain on bond.

(Whereupon at 2:45 o'clock p.m. an adjournment was taken until Monday, December 20, 1954, at 2:00 o'clock p.m.) [38]

Monday, December 20, 1954. 2:00 P.M.

(Other court matters.)

The Clerk: No. 30 on the calendar. 23021, Criminal, United States vs. Mitchell Paul Dobrenen.

* * *

Mr. Tietz: Well, may I file an application for bail?

The Court: Let me sentence the defendant now. Are you ready for sentence at this time?

Mr. Tietz: No legal reason why the court shouldn't proceed.

The Court: It is the judgment of this court that the defendant be sentenced, for imprisonment, to the custody of the Attorney General for four years.

Mr. Tietz: I am filing with the clerk a duplicate or triplicate notice of appeal. I have already paid the clerk's fee. I am filing in duplicate application for bail in the sum of \$1,000. I think that will be

sufficient, your Honor. There won't be any problem——

The Court: I think it would be more than sufficient, Mr. Tietz, if there was any substantial point of law.

Mr. Tietz: I presented the two points which I think are substantial, and I should add my own view to this: When counsel who has fairly studied the case thinks that there is a chance for his client to secure a reversal on appeal, that [40] should have some weight with the court, and the defendant should get the benefit of the doubt, and he should have a chance to be able to have his appeal. Now, your Honor knows very well that these fellows, if they are to languish in jail, can't use their funds for an appeal. They just haven't the funds. So, in effect, in a good many cases, it is denying an opportunity to the defendant to have a review of his case.

Your Honor would certainly agree with me that in every decision your Honor has made or will make your Honor can't be right in all of them. There are questions of law, like here, that other judges could disagree.

The Court: Did you ever have a Selective Service case that you didn't contend that there was a substantial question of law in it?

Mr. Tietz: Yes, sir. What I used to do——

The Court: Didn't you argue to me a substantial question of law in cases where a registrant had not even taken an appeal?

Mr. Tietz: Yes, sir. Until recently when the

Court of Appeals decided the Mason case. It is not yet reported.

The Court: It is down. I have a copy.

Mr. Tietz: The slip opinion is down, but it is not yet reported. I wasn't convinced on that. I still think that in a case like that there are certain defenses that can be [41] put up on the circumstances of the case. There are certain constitutional attacks that might be made.

For example, if he received a I-O classification—Come to think of it I have two cases before the Court of Appeals, they are both cases where they got the I-O, they wouldn't do the work, they are both Sacramento cases, Reese is one and Riley is another, and they are both out on bail. The judge there, Judge Oliver Carter, was sitting in Sacramento at the time. He thought there was a substantial question. Now, they never took an appeal. So the constitutional attacks there, I think, are substantial points on appeal. And there can even be others. There can be failures in due process as distinguished from attacks on the classification.

I think an individual is foreclosed, a registrant is foreclosed from presenting defenses that are based on classification attacks, no basis and so on. So I would say in most of these cases, regardless, that there are some substantial questions. And, furthermore, I never was so sure of it as I am today. Six months ago I couldn't have been so sure. I was just figuring I would say to these fellows, when they would want an appeal, I would say, "Well, you have got one chance in ten, that is my estimate. You have

asked me for an estimate. One chance in ten." But the way they have been coming down from the Court of Appeals, I [42] have changed my odds.

Of course, the trick is to get in there.

If this fellow is thrown into jail the chances are that his wife won't be able to go ahead. I am not sure about that. But the chances are that that is where he will be.

Fortunately for those other people that I named, Basil Starrett, who was denied bail by Judge Mathes, and by the Court of Appeals, when I went up there, and Roger Clark, who was denied bail by Judge Hammond, and it was denied by the Court of Appeals when I went up there, they had a general counsel who is a very able lawyer, and he went to Washington, he got bail for them after Starrett was in jail in Tucson for ten weeks, and Roger Clark was in the County Jail for about eight weeks, I think.

But these boys don't have that kind of an opportunity.

I just repeat, in closing, there is a substantial basis, as Judge Westover said, to use his words, in all these cases, and certainly now when we see how the various Courts of Appeal have looked at them. So I think that he should be given bail and given his chance.

The Court: Is that all?

Mr. Tietz: Yes, sir.

The Court: Motion for bail on appeal denied. The court finds no substantial question. [43]

Mr. Tietz: May he have a stay of a few days?

The Court: Why? Wasn't this one of the cases that you asked——

Mr. Tietz: It is the Christmas season, let's put it on that basis. Give him a week so he can be home with his wife.

The Court: Well, I don't think this was in the same category as the others. I think this case came up later. In the other two cases you asked for a week and I gave it to you.

Mr. Hicks: It did, your Honor. This was tried last week.

The Court: All right. I will grant a stay of execution until Monday, December 27th, 12:00 noon.

Mr. Tietz: Thank you.

The Defendant: Thank you.

Mr. Hicks: Bond will be exonerated at the time he surrenders?

The Court: Bond will be exonerated at the time of his surrender.

[Endorsed]: Filed December 31, 1954. [44]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered from 1 to 17, inclusive, contain the original Indictment; Stipulation; Motion for Judgment of Acquittal; Renewal of Motion for Judgment of

United States Court of Appeals
for the Ninth Circuit

No. 14636

At a Stated Term, to wit: The October Term, 1954, of the United States Court of Appeals for the Ninth Circuit, held in the Courtroom thereof, in the City of Los Angeles, in the State of California, on Monday, the third day of January, in the year of our Lord one thousand nine hundred and fifty-five.

Present: Hon. Albert Lee Stephens, Circuit Judge,
Presiding,

Hon. James Alger Fee, Circuit Judge,

Hon. Richard H. Chambers, Circuit Judge.

MITCHELL PAUL DOBRENEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER SUBMITTING AND GRANTING
MOTION FOR BAIL

Ordered motion of Appellant for admission to bail pending appeal presented by Mr. J. B. Tietz, counsel for the Appellant, and by Mr. Cecil Hicks, Jr., Assistant U. S. Attorney, counsel for the Appellee in opposition thereto, and submitted to the Court for consideration and decision.

Upon consideration thereof, It Is Further Ordered that said motion be, and hereby is granted, and the Appellant be, and hereby is admitted to bail pending appeal upon the filing of a bail bond in the sum of One Thousand Dollars (\$1,000.00), the bail bond or cash deposited conditioned as required by law, approved by the United States Attorney for the Southern District of California, and the Chief Judge of the said District Court, and filed with the Clerk of said District Court.

[Certified Copy]

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY ON
APPEAL

Appellant will rely upon the following points in the prosecution of his appeal from the judgment entered in the above-entitled cause.

I.

The reclassification of appellant from Class I-O to Class I-A was made without basis in fact and was made solely because of invalid and artificial reasons.

II.

The adverse recommendation of the Attorney General to the Appeal Board, used and relied on by said Appeal Board was unsupported by any factual basis therein, or in the file.

III.

The Local Board deprived the appellant of procedural due process of law by failing to have posted conspicuously at the office of the Local Board the names and addresses of the advisors to registrants, as required by section 1604.41 of the regulations to his prejudice.

IV.

The undisputed evidence is that the appellant gave the Hearing Officer of the Department of Justice, material information not contained in the file, and that neither it, nor a summary thereof, appears in the only document transmitted by the Department of Justice to the Appeal Board, to wit, the letter of adverse recommendation by the Attorney General, now designated pages 50-51 of the Selective Service file.

V.

The failure of the trial court to compel the production of the FBI secret investigative report, so as to ascertain whether the Hearing Officer gave this appellant a full and fair resume of the adverse evidence which tended to defeat the conscientious objector claim, and the Court's order sustaining the Government's motion to quash the subpoena duces tecum constituted a deprivation of the defendant's procedural rights.

VI.

The final adverse recommendation of the Department of Justice to the Appeal Board was not given to the appellant and he was not given a copy of it before he was placed in the final I-A Classification;

thereby he was deprived of his right to answer and defend himself before the Appeal Board, contrary to the Act and the Fifth Amendment to the United States Constitution.

VII.

The Department of Justice deprived appellant of his right to procedural due process of law when it failed and refused to include in the file the report of the Hearing Officer, and the regulation prohibiting the placing of the report in the file is invalid because it conflicts with the Act and the due-process clause of the Fifth Amendment to the United States Constitution.

VIII.

It was the duty of the Department of Justice, regardless of its recommendation, to provide the Appeal Board with a complete summary of the favorable evidence appearing in the FBI report that was also developed at the hearing before the Hearing Office and reported by him. The Department's failure to provide the Appeal Board with a complete summary of such evidence deprived the defendant of a full and fair hearing before the Appeal Board.

IX.

The failure of the Court to compel the production of the FBI investigative report and the order of the Court sustaining the motion to quash the subpoena duces tecum made by the Government constitute a deprivation of the appellant's right to due process

of law upon criminal trials, contrary to the Fifth Amendment to the United States Constitution and the right to confrontation guaranteed by the Sixth Amendment, and also violates the statutes and rules of Court providing for the issuance of subpoenas in behalf of defendants in criminal cases.

X.

In view of the Draft Board's failure to prepare findings of fact to controvert or impeach appellant's conscientious objector claim, he should have been acquitted and this Court should hold that the final I-A Classification was contrary to law, arbitrary, capricious and without basis in fact.

/s/ J. B. TIETZ.

[Endorsed]: Filed January 29, 1955.